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10/813,948

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David J. Kuether

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EXAMINER

ARAGON, LORENZO C

ART UNIT

PAPER NUMBER

4157

MAIL DATE

DELIVERY MODE

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/813,948

Applicant(s)

KUETHER ET AL.

Examiner

Lorenzo C. Aragon

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03/21/2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date ____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- ☐ Notice of Informal Patent Application
- ☐ Other: ____.

DETAILED ACTION

Specification

1. Following Office Action based on analysis of U.S. Patent Application Publication, US 2005/0229212, dated Oct. 13, 2005.

The document title has yet to incorporate the Preliminary Amendment change. No action required from applicant.

2. The use of the trademarks DISH NETWORK, TIVO, REPLAYTV, SEASON PASS, WISH LIST, COMMERCIAL ADVANCE, MYREPLAYTV, FIREWIRE, and WIMBLEDON, have been noted in this application. They should be capitalized wherever they appear and be accompanied by the generic terminology. Additionally, TIVO does not trademark the term "Smart Recording," as annotated on page 1, paragraph [0013, line 6].

3. Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

4. The disclosure is objected to because of the following informalities:

a. On page 3, paragraph [0038, line 15], "step **106**" is listed, but not supported in the drawings. Appropriate correction is required.

b. On page 3, paragraph [0039, line 4], for consistency with terminology used in Figs. 6a and 6b, add the word Service to "(code 49)". Should read, -- (Service Code 49) --. Appropriate correction is required.

c. Identify appropriate figure for numbered items appearing on multiple drawings and for items in close proximity of each other, but in different drawings.

i. On page 3, paragraph [0037, line 11], "MPT packet 34," appears on figures 2 and 5. Add (figure 5) after above. Should read, -- MPT packet 34 (figure 5), --

ii. On page 4, paragraph [0039, line 17], for clarification, add figure 3b after "(step 110)." Should read, -- (step 110, figure 3b) --. Appropriate correction is required.

Drawings

5. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign mentioned in the description: step 106 (should be on Fig. 3b). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office Action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office Action. The objection to the drawings will not be held in abeyance.

6. The drawings are objected to because in Fig. 4e (should be labeled as 52) the drawing is not labeled. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office Action to avoid abandonment of the application. Any

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amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

8. Claims 1-2, 5, 9-10, 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Wagner et al. in U.S. Pat. 7,207,056.

a. Regarding claim 1, Wagner discloses as claimed:

A method of downloading a remote record request to control a recording device (Abstract and column 2, lines 51-52, "Systems and methods for remotely scheduling tasks that are transmitted to a set top box and implemented on the set top box"), comprising:

receiving a remote record request including a program code and a subscriber ID at a satellite broadcast center (FIG. 2: 210 and col. 2, lines 53-57),

inserting the remote record request into a broadcast stream that is uplinked to a satellite (FIG. 2: 200, 202)

transmitting the broadcast stream via the satellite (FIG. 2: satellite 160 broadcasting to set top box 100),

downloading the remote record request at a subscriber site (col. 2, lines 60-62),

determining whether the remote record request is directed to the subscriber site by comparing the subscriber ID to a subscriber site ID, and, if confirmed, tagging the program code for recording on the recording device (col. 2, lines 65, i.e. "record task", also col. 3, lines 8-15).

b. Regarding claim 2, which further recites inserting the remote record request into a MPT packet; and inserting the MPT packing into a transport packet in the broadcast stream (column 5, lines 15-22); Wagner discusses, "The demodulator produces a transport stream, which typically represents multiple channels, from the

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tuned broadcast. The transport stream typically includes audio, video and data packets for multiple channels but may also include program guide data, conditional access data, and the like.”

c. Regarding claim 5, Wagner discloses as claimed

validating a portion of the remote record request at the satellite broadcast center, and validating another portion of the remote record request at the subscriber site (columns 2, line 67 and column 3, lines 1-11).

d. Regarding claim 9, Wagner disclose as claimed

The method of claim 1, further comprising: using an input device to access a programming guide, select the program and submit the remote record request, and sending the remote record request to the satellite broadcast center (column 2, lines 53-57).

e. Regarding claim 10, Wagner discloses as claimed

The method of claim 9, wherein the input device accesses a remotely maintained program guide in near real-time over a network (column 2, lines 60-64).

f. Regarding claim 18, Wagner discloses as claimed

A satellite broadcast network in which a broadcast stream is sent from a satellite broadcast center (SBC) via satellite to a plurality of subscriber sites each having antenna, an integrated receiver decoder (IRD) and a recording device, wherein said SBC is configured to receive a remote record request including a program code and a subscriber ID and insert the request into the broadcast stream, and wherein the IRD is configured to decode the request from the broadcast stream, compare the subscriber ID

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to a stored ID, and, if valid, tag the program code for recording on the recording device (FIG.2; Abstract; column 2, lines 50-67 and column 3, lines 1-22).

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

- a. Determining the scope and contents of the prior art.
- b. Ascertaining the differences between the prior art and the claims at issue.
- c. Resolving the level of ordinary skill in the pertinent art.
- d. Considering objective evidence present in the application indicating obviousness or nonobviousness.

11. Claim 3-4, 6-8, 12-17, 19-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wagner et al. (U.S. Pat. 7,207,056) in view of Grzeckowski in U.S. Pat. Pub. No. 2004/0047599.

a. Regarding claim 3, Wagner discloses the invention of claim 1, but does not explicitly disclose sending a verification response to the subscriber. However, the concept and advantage of claim 3 is well known and obvious as evidenced by Grzeckowski (see page 2, column 1, paragraph [0018, lines 1-10]). Grzeckowski discloses "a command may be sent from the remote device 10 to the digital television

terminal 100. Once the command is received by the digital television terminal 100, a reply may then be sent from the digital television terminal 100 to the remote device 10 acknowledging receipt of the command. The command may comprise one of a record program command, a program reminder command, a parental control command, or other configuration and control commands for the digital television terminal 100."

Accordingly, it would have been obvious to one having ordinary skill in the art at the time of applicant's invention to combine the systems of Wagner and Grzeckowski to provide a method for sending a verification response to the subscriber as claimed.

b. Regarding claim 4, Wagner discloses the invention of claim 1, but does not explicitly disclose sending a positive or negative verification response and a prompt to the subscriber to override any conflicts. However, the concept and advantage of claim 3 is well known and obvious as evidenced by Grzeckowski (see page 2, column 1, paragraph [0018, lines 1-10]). Grzeckowski discloses "a command may be sent from the remote device 10 to the digital television terminal 100. Once the command is received by the digital television terminal 100, a reply may then be sent from the digital television terminal 100 to the remote device 10 acknowledging receipt of the command. The command may comprise one of a record program command, a program reminder command, a parental control command, or other configuration and control commands for the digital television terminal 100."

Accordingly, it would have been obvious to one having ordinary skill in the art at the time of applicant's invention to combine the systems of Wagner (column 7, lines

47-52) and Grzeckowski to provide a method for sending a positive or negative verification response and a prompt to the subscriber to override any conflicts.

c. Regarding claim 6, Wagner discloses the invention of claim 1, but does not explicitly disclose the limitation of validating and verifying a response to the subscriber for possible action. However, as mentioned above, the concept and advantage of claim 6 is well known and obvious as evidenced by Grzeckowski (see page 2, column 1, paragraph [0018, lines 1-10]).

Accordingly, it would have been obvious to one having ordinary skill in the art at the time of applicant's invention to combine the systems of Wagner (column 11, lines 18-30) and Grzeckowski to provide a method for validating and verifying a response to the subscriber for possible action. It should also be obvious to one having ordinary skill in the art that if incorrect access information is entered, the process does not begin and feedback is immediate.

d. Regarding claim 7, the claimed step of "validating that the selected program does not exceed a ratings limit, validating that the selected program does not exceed a billing limit, and validating that the remote record request is a feature included in a service package" is met by the task detector prior art disclosed by Wagner (see column 9, lines 63-67 and column 10, lines 1-4).

e. Regarding claim 8, Wagner discloses the invention of claim 1, but does not explicitly disclose the limitation of sending a negative verification response that rejects the remote record request and prompts the subscriber to override any conflicts that gave rise to the rejection. However, as previously mentioned, the concept and

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advantage of claim 8 is well known and obvious as evidenced by Grzeckowski (see page 2, column 1, paragraph [0018, lines 1-10]).

Accordingly, it would have been obvious to one having ordinary skill in the art at the time of applicant's invention to combine the systems of Wagner (column 7, lines 47-52) and Grzeckowski to provide a method for sending a positive or negative verification response and a prompt to the subscriber to override any conflicts.

f. Regarding claims 12 and 14, Wagner discloses substantially the method of claims 12 and 14 as discussed in claim 1 above, but does not explicitly disclose a method of validating and verifying a response to the subscriber for possible action. However, the concept and advantage of claims 12 and 14 are well known and obvious as evidenced by Grzeckowski as previously mentioned in claim 6 (page 2, column 1, paragraph [0018, lines 1-10]).

Accordingly, it would have been obvious to one having ordinary skill in the art at the time of applicant's invention to combine the teachings of Wagner (Abstract; column 2, lines 51-52; column 3, lines 8-13; column 5, lines 62-67; column 6, lines 1-3; and column 7, lines 47-52) and Grzeckowski to provide a method for validating and verifying a response to the subscriber for possible action.

g. Regarding claim 13, the claimed "The method of claim 12, further comprising at least one of the following: validating that the selected program does not exceed a ratings limit, validating that the selected program does not exceed a billing limit, validating that the remote record request does not conflict with a previous record request, validating that the recording device has sufficient memory to record the

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selected program, validating that the selected program is included in a subscriber service package, and validating that the remote record request capability is included in the subscriber service package” is met by the task detector 106 in Wagner’s teaching (FIG. 2: 106; column 9, lines 63-67 and column 10, lines 1-4). Although Wagner does not directly discuss validation methods, Wagner broadly discusses a conflict resolution attribute (column 7, lines 47-52). Wagner discloses more than one method listed in this claim.

h. Regarding claim 15, “The method of claim 14, further comprising: inserting the remote record request into an MPT packet; and inserting the MPT packing into a transport packet that is broadcast via the satellite” (column 5, lines 15-22; Wagner discusses, “The demodulator produces a transport stream, which typically represents multiple channels, from the tuned broadcast. The transport stream typically includes audio, video and data packets for multiple channels but may also include program guide data, conditional access data, and the like.) Wagner further discusses, “The satellite uplink 202 integrates the notification 214B into the data that is sent to the satellite 160 which, in return, broadcasts the notification 214B to the set top box 100” (column 8, lines 37-40).

i. Regarding claim 16, the claimed “The method of claim 14, further comprising validating the request to open the link to a satellite broadcast center” is met by Wagner’s disclosures (column 10, lines 66-67 and column 11, line 1; and column 11, lines 23-30).

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j. Regarding claim 17, "The method of claim 14, wherein the request is validated to determine whether the selected can be recorded by, checking for a time conflict with previous record requests; and checking for adequate remaining memory in the record device" is met by Wagner's disclosure on conflict resolution (column 7, lines 47-52).

k. Regarding claim 19, Wagner discloses the invention of claim 18, but does not explicitly disclose "an I/O port for receiving the remote record request; a billing center having a record of subscribers and subscribed services; a validation switch that compares the subscriber ID against the record of subscribers and subscribed services to validate the remote record request; a bridge router that for validated requests inserts the subscriber ID and the program code into a MPT packet; and an uplink system that inserts the MPT packet into a transport packet and transmits the transport packet to the satellite." It would have been obvious to one having ordinary skill in the art at the time of applicant's invention that a broadcast center must have a capability to receive the remote request for processing. Although Wagner does not address the limitation of a billing center, combining Wagner and Grzeckowski's teachings (page 2, paragraph [0017, lines 1-7]), it would have been obvious to one having ordinary skill in the art at the time of applicant's invention to combine the systems of Wagner and Grzeckowski to address the billing function to include having records of subscribers and subscribed services. The validation aspects in this claim are addressed throughout this document and are a recitation of other claims or items contained in previous claims. In regards to the uplink system, it is inherently obvious to one having ordinary skill in the art at the

time of applicant's invention that an uplink system is required to transmit the remote request to the satellite (Wagner, FIG 2: 200, 202, 160).

l. Regarding claim 20, "A subscriber input device for accessing an interactive programming guide for subscriber selection of the program, said input device transmitting the remote record request including the program code and the subscriber ID to the SBC, and A back channel connecting the subscriber IRD to the subscriber input device, said IRD sending a verification response via the back channel to the input device to confirm or reject the remote record request" is met by Wagner (column 3, lines 60-66 and column 3, lines 8-13). In regards to a back channel as claimed, this limitation is met by an Ethernet connection disclosed in Wagner.

m. Regarding claim 21, it is recited as applied to claim 6.

n. Regarding claim 22, it is recited as applied to claim 19.

o. Regarding claim 23, Official Notice is hereby taken that it is well known in the art of satellite communications that a subscriber site must have a means for receiving a remote record request and the associated equipment (e.g., a recording device, a back channel, an antenna, etc.). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to include such items. The remainder of this claim is a recitation of the claims previously addressed by this Office Action above and is met by the combined teachings of Wagner and Grzeckowski (page 2, column 1, paragraph [0018, lines 1-10]).

12. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wagner in view of Grzeckowski and in further view of Kandasamy et al. in U.S. Pat. Pub. No. 2004/0187164.

13. Regarding claim 11, the combined teachings of Wagner and Grzeckowski do not explicitly teach claim 11. However, Wagner in view of Grzeckowski and in further view of Kandasamy does teach that the program guide is downloaded off-line and stored in the input device (Kandasamy, page 5, paragraph [0064, lines 4-6]).

Accordingly, it would have been obvious to one having ordinary skill in the art at the time of applicant's invention to combine the teachings of Wagner, Grzeckowski, and Kandasamy to provide the method of claim 9, wherein the program guide is downloaded off-line and stored in the input device.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Ellis et al. (US Pat. Pub. No. US 2005/0028208) and Jaff et al. (US Pat. No. US 7,281,261) teach various aspects in applicant's disclosure (e.g., delivering program guide to client system by various methods, receiving programming content and other data from satellite, bi-directional connectivity between set top box and network, etc.).

Contact

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lorenzo C. Aragon whose telephone number is (571) 270-3727. The examiner can normally be reached on 8:00 AM - 10:00 PM M-F, EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vu Le can be reached on (571) 272-7332. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Lorenzo C. Aragon/

Patent Examiner
Patent Training Academy


VU LE
SUPERVISORY PATENT EXAMINER

Examiner: Lorenzo C. Aragon
Serial No.: 20050229212
Date: October 24 , 2007

Examination Checklist

Questions to ask when examining application:

1. What's the "effective" filing date of the application? Is there also foreign priority date?

Effective filing date: March 31, 2004

Domestic Benefit: Not claimed. Verified by reviewing first sentence of the amended specification. No Applicant Data Sheet filed.

Foreign Priority: Not claimed. Verified by reviewing Oath/Declaration (Combined Declaration for Patent Application and Power of Attorney). No Applicant Data Sheet filed.

2. What's the problem with prior art? (See "Background of the Invention")

This invention relates to satellite broadcast television and identifies the lack of a near real time system and method for downloading and verifying a subscriber's remote record request to control a recording device such as a VCR, DVR or VTR using the existing satellite network.

3. What's applicant's proposed solution and/or improvement? (See "Summary" and "Detailed" Spec)

The invention provides a near real time system and method for downloading a subscriber's remote record request to control a recording device and for sending a verification response to the subscriber using the existing satellite network.

4. Are claims reflect the proposed solution and/or improvement as disclosed?

Claims 1-17 seem to support the improvement. Claims 18-23 seem too broad.

Check Below:

NO CONTINUATION case? Check **"Continuity/Foreign Data"** in eDAN or PALM, **if yes**

See me. We need to check if original Examiner wants to work on it first.

YES Primary assigned CLASSIFICATION correct? If not, we may have to transfer. See your SPE/primary.

NO RESTRICTION? (i.e., multiple inventions?) If yes, see your SPE/Primary.

OK Draw claim tree and group claims (use this link: www.pattools.com/claim_tree.html)

NO DOUBLE PATENTING? Do **inventor search** using PALM or eDAN, see **flowchart in ch. 800 of MPEP**

YES Preliminary Amendment? If yes, it supersedes original disclosure. **NEW MATTER?** See SPE/primary.

Amendment added "near" in front of real time in title. No new matter.

YES IDS (information disclosure statement) filed? If yes, review, annotate & remove IDS flag.

Check Document all search activities, including whom consulted.

YES Prior Art found? Not sure about date? See SPE/Primary.